

## SUPREME COURT PENDING CASES

*The following appeals are fully briefed and eligible for assignment by the Supreme Court in the near future.*

KATHLEEN KUCHTA, ZONING ENFORCEMENT OFFICER *v.*  
EILEEN R. ARISIAN, SC 19730  
*Judicial District of Ansonia-Milford*

**Zoning; Whether Municipalities are Authorized to Regulate Only Signs that Promote Business; Whether Regulation of Signs Violates Free Speech Rights; Whether Trial Court Erred in Refusing to Enjoin Occupancy Until Defendant Obtains Zoning Certificates.** The defendant, dissatisfied with construction work performed on her Milford home, erected three signs on the property that were critical of the contractor that had performed the work. The town's zoning enforcement officer (the plaintiff) brought this action asking that the defendant be ordered to remove the signs. The plaintiff also claimed that the defendant was occupying the premises in violation of the zoning regulations in that she had not obtained a certificate of zoning compliance or a certificate of occupancy, and the plaintiff sought that the defendant be enjoined from continuing to occupy the premises until she acquired the required certificates. The trial court refused to order that the defendant remove the signs or that she be enjoined from continuing to occupy the premises. The court ruled that the city had no authority to regulate the signs, rejecting the plaintiff's claim that a municipality can rightfully regulate any sign that publicly conveys a message. The court ruled that, while General Statutes § 8-2 (a) authorizes municipalities to regulate "the height, size and location of advertising signs," the defendant's signs were not "advertising signs" as contemplated by that statute. The court interpreted the phrase "advertising signs" to connote "signs that promote or emphasize qualities or attributes that are used in order to solicit or encourage participation or patronage," and held that the defendant's "protest signs" did not encourage any such participation or patronage. Next, the trial court ruled that, while the defendant did not possess the necessary zoning certificates, the equities did not favor granting the injunctive relief sought by the plaintiff. In so concluding, the court found it significant that the main reason for the city's continued refusal to issue the zoning certificates, an alleged lot size violation, had not been asserted in the complaint and had not been subject to the applicable administrative enforcement procedures. The plaintiff appeals, claiming that the trial court improperly held that § 8-2 (a) authorizes municipalities to regulate only signs that promote business patronage. The plain-

tiff contends that the plain language of § 8-2 (a), as well as the legislative purpose underlying the statute, supports interpreting the phrase “advertising signs” to include all signs that publicly convey a message. The plaintiff also claims that because the zoning regulations provide that a person cannot occupy a building without first obtaining the necessary zoning certificates, the trial court erred in not enjoining the defendant from continuing to occupy her home. The defendant asks that, should the Supreme Court determine that the city has the authority to regulate her signs, it nonetheless affirm the trial court’s judgment on the alternative ground that the signs are protected speech under the federal and state constitutions.

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KEVIN EPPS *v.* COMMISSIONER OF CORRECTION, SC 19773

*Judicial District of Tolland*

**Habeas; Whether, in Habeas and Other Collateral Proceedings, the Harmless Error Standard or Some More Stringent Standard of Harm Should Apply.** In 2005, the petitioner was convicted of assault in the first degree and kidnapping in the first degree. He brought this habeas action challenging the kidnapping conviction on the ground that the trial court failed to properly instruct the jury on the elements of the crime of kidnapping in accordance with *State v. Salamon*, 287 Conn. 509 (2008). In *Salamon*, the Supreme Court held that “to commit a kidnapping in conjunction with another crime, a defendant must intend to prevent the victim’s liberation for a longer period of time or to a greater degree than that which is necessary to commit the other crime.” The habeas court granted the habeas petition, vacated the kidnapping conviction, and remanded the case for a new trial on that charge. The respondent appealed, and the Appellate Court (153 Conn. App. 729) affirmed the habeas court’s judgment. The Appellate Court rejected the respondent’s claim that the petitioner failed to prove that he was prejudiced by the trial court’s failure to give a *Salamon* jury instruction. It observed that a petitioner is almost invariably prejudiced when the jury is not instructed on an essential element of an offense and that such error can be deemed harmless only when the reviewing court, in examining the entire record, is satisfied beyond a reasonable doubt that the omitted element was uncontested and supported by overwhelming evidence, such that the jury verdict would have been the same absent the error. The Appellate Court found that, here, the allegations that gave rise to the kidnapping charge were not uncontested and supported by overwhelming evidence and accordingly that it had no reasonable assurance that the petitioner’s kidnapping

conviction was not based on restraint of the victim that was incidental to the petitioner's assault of the victim. The respondent has been granted certification to appeal the Appellate Court's judgment. The Supreme Court will decide whether, in a collateral proceeding where the petitioner claims that the trial court erred in omitting an element of a charged crime in its jury instructions, harm should be measured in accordance with *Brecht v. Abrahamson*, 507 U.S. 619 (1993), or *Neder v. United States*, 527 U.S. 1 (1999). In *Brecht*, the United States Supreme Court held that a federal habeas court must find that a constitutional error had a "substantial and injurious effect" on the verdict before granting habeas relief. In *Neder*, the United States Supreme Court held that, on direct appeal, a claim that a jury instruction omitted an essential element of a charged crime is subject to harmless error analysis, that is, "whether it appears beyond a reasonable doubt that the error complained of did not contribute to the verdict obtained." If the Supreme Court adopts the *Brecht* standard, it will decide whether the evidence in this case established that the absence of a *Salamon* instruction had a substantial and injurious effect on the jury's verdict of guilty on the kidnapping charge. If the Supreme Court adopts the *Neder* standard, it will decide whether the Appellate Court erred in holding that it had no reasonable assurance that the kidnapping conviction was not based on a restraint of the victim that was incidental to the assault.

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A PIECE OF PARADISE, LLC *v.* BOROUGH OF FENWICK ZONING  
BOARD OF APPEALS, SC 19890  
*Judicial District of Hartford*

**Zoning; Variances; Whether Applicant's Hardship Self-Created; Whether Denial of Variance Confiscatory; Whether Variance Would Substantially Affect Comprehensive Zoning Plan that Incorporates Coastal Site Plan Requirements.** A Piece of Paradise, LLC (Paradise) owns a parcel of land (the West Lot) located in the borough of Fenwick in the town of Old Saybrook. The West Lot was once part of a larger parcel and, in 2006, the owners of the larger parcel divided the property, retaining the East Lot and conveying the smaller West Lot to Paradise. In 2011, the borough's zoning regulations were amended to impose new setback requirements in relation to Long Island Sound and in relation to the beach and dunes, and to include a coastal vegetation buffer zone. Paradise sought a variance of the new setback requirements in order to build a single-family home, claiming that the amendments to the regulations effectively prevented

any building on the property. The zoning board denied the variance, and Paradise appealed to the Superior Court. The court dismissed the appeal, holding that the board properly denied the variance because Paradise failed to prove that the new setback requirements caused a hardship or that the variance would not substantially affect the borough's comprehensive zoning plan. The court found that any hardship was self-created because Paradise acquired a lot that was not protected from zoning changes and that was not approved for building because it had not been subject to coastal site plan review, which was required before any improvements to the property could be made. The court also found that the denial of the variance was not confiscatory because the West Lot could be used as a side yard to a house located on the East Lot. The court further found that Paradise's proposal did not comply with the comprehensive zoning plan, which incorporated coastal site plan requirements, reasoning that Paradise must first obtain coastal site plan approval and that its proposal would have a negative effect on coastal resources. Paradise appeals, claiming that the trial court improperly found that its hardship was self-created rather than caused by the 2011 amendments to the zoning regulations, that the effects of the 2011 amendments were not confiscatory, and that Paradise's variance application was inconsistent with the borough's comprehensive zoning plan.

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*The summaries appearing here are not intended to represent a comprehensive statement of the facts of the case, nor an exhaustive inventory of issues raised on appeal. These summaries are prepared by the Staff Attorneys' Office for the convenience of the bar. They in no way indicate the Supreme Court's view of the factual or legal aspects of the appeal.*

*John DeMeo*  
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